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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/501,526	07/16/2004	Tsuyoshi Komuro	T3736-9161US01	7145
62574	7590	10/08/2008	EXAMINER	
Jason H. Vick Sheridan Ross, PC Suite # 1200 1560 Broadway Denver, CO 80202			UBER, NATHAN C	
			ART UNIT	PAPER NUMBER
			3622	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jvick@sheridanross.com

Office Action Summary	Application No. 10/501,526	Applicant(s) KOMURO ET AL.	
	Examiner NATHAN C. UBER	Art Unit 3622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 June 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☒ Claim(s) 9, 15 and 17-20 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>See Continuation Sheet</u> . | 6) <input type="checkbox"/> Other: _____ |

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :17 June 2008, 24 October 2006, 09 August 2004.

DETAILED ACTION

Status of Claims

1. This action is in reply to the amendment filed on 17 June 2008.
2. Claims 1, 2, 4-6, 9, 10 and 18-20 have been amended.
3. Claims 1-20 are currently pending and have been examined.

Information Disclosure Statement

4. The Information Disclosure Statements filed on 17 June 2008, 9 August 2004 and 24 October 2006 have been fully considered. With regard to the IDS filed 12 August 2004, the only reference listed, JP 2000-322433, is a foreign reference and Applicant is required to submit a copy of all foreign references as well as an English abstract or explanation of relevance. Among the prior art submitted by applicant, the reference JP 2000-322433 is not part of the application file and was either not submitted or was lost. Examiner has not considered reference JP 2000-322433.

Drawings

5. The drawings objections previously made were withdrawn. However, Examiner does not recognize where in figures 2-4 Applicant has included elements of the invention; Examiner only recognizes the basic framework for a standard computer.

Claim Objections

6. Claims 2, 9 and 18-20 were objected to because of minor spelling informalities. Appropriate corrections were made, the objection is withdrawn.
7. Claims 15 and 17 were objected to because they are improper dependent claims. The objection is maintained. Claims 15 and 17 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claims, or amend the claims to place the claims in proper dependent form,

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or rewrite the claims in independent form. The claims refer to independent claims 2 and 6, respectively. However they are each directed to *the device of claim ##*, when in fact claims 2 and 6 are not directed to devices.

8. Claims 9 and 18-20 were objected to because they are improper dependent claims under 35 U.S.C. 112 4th paragraph. The objection is maintained. A proper dependent claim shall include every limitation of the claim from which it depends (35 U.S.C. 112, fourth paragraph) or in other words it shall not conceivably be infringed by anything which would not also infringe the basic claim. (See MPEP 608.01(n)III) Here any computer or PDA may infringe claims 9 and 18-19 and not also infringe the claims from which they depend. Claims 9 and 18-20 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claims, or amend the claims to place the claims in proper dependent form, or rewrite the claims in independent form. The claims must be cancelled, or rewritten in independent form.
9. Claims 9 and 18-20 were objected to because they are in improper sequence. The objection is maintained. Dependent claims are separated from the claims from which they depend by other unrelated dependent and independent claims. See MPEP § 608.01(n)IV.

Claim Rejections - 35 USC § 112

10. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.
11. Claims 1, 2 and 4-6 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. The limitation *means for outputting information showing which content portion of the content portions*

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which are combined with the advertisement portion is effective for the advertisement by comparing number of distribution for combinations of the content portions and the advertisement portion was not part of the original disclosure and is not supported by the specification.

12. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

13. Claims 1, 2 and 4-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are indefinite because the limitation *means for outputting information showing which content portion of the content portions which are combined with the advertisement portion is effective* contains the following additional language *by comparing number of distribution for combinations of the content portions and the advertisement portion*. Apparently the *means* that is the subject of this limitation accomplishes the *outputting* function in part by *comparing*, however it is not clear (1) what is being compared and (2) how a comparison step enables a device to accomplish an outputting function. Examiner interprets this limitation to mean counting the number of times an advertisement is distributed and making that figure available.

14. Claims 1 and 5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim element "*means for outputting information showing which content portion of the content portions which are combined with the advertisement portion is effective for the advertisement by comparing number of distribution for combinations of the content portions and the advertisement portion*" is a means (or step) plus function limitation that invokes 35 U.S.C. 112, sixth paragraph. However, the written description fails to disclose the corresponding structure, material, or acts for the claimed function.

1. Applicant is required to:

(a) Amend the claim so that the claim limitation will no longer be a means (or step) plus function limitation under 35 U.S.C. 112, sixth paragraph; or

- (b) Amend the written description of the specification such that it expressly recites what structure, material, or acts perform the claimed function without introducing any new matter (35 U.S.C. 132(a)).
2. If applicant is of the opinion that the written description of the specification already implicitly or inherently discloses the corresponding structure, material, or acts so that one of ordinary skill in the art would recognize what structure, material, or acts perform the claimed function, applicant is required to clarify the record by either:
- (a) Amending the written description of the specification such that it expressly recites the corresponding structure, material, or acts for performing the claimed function and clearly links or associates the structure, material, or acts to the claimed function, without introducing any new matter (35 U.S.C. 132(a)); or
- (b) Stating on the record what the corresponding structure, material, or acts, which are implicitly or inherently set forth in the written description of the specification, perform the claimed function. For more information, see 37 CFR 1.75(d) and MPEP 2181 and 608.01(0).

Claim Rejections - 35 USC § 101

15. 35 U.S.C. 101 reads as follows:
- Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.
16. Claims 2 and 6 were rejected under 35 U.S.C. 101 because the claimed invention was directed to non-statutory subject matter. This rejection is maintained. Examiner suggested replacing *computer program* with “a computer-executable program tangibly embodied on a computer readable medium” to overcome the rejection. Applicant took Examiner suggestion, however Examiner's suggestion was not adequate to overcome the rejection as the claim is still directed to *a program*. Examiner now suggests replacing *computer executable program* with *computer executable program product*. This is necessary because a product of manufacture is a statutory

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class of invention whereas a program is not. Examiner notes that the only deficiency in the previous suggestion was the lack of the word *product* and maintains that the other elements Examiner suggested remain necessary to overcome this rejection.

17. Claim 10 was rejected under 35 U.S.C. 101 because the claim was directed to non-statutory subject matter. This rejection is maintained. Examiner suggested replacing *computer program* with “a computer-executable program tangibly embodied on a computer readable medium” to overcome the rejection. Examiner’s suggestion was deficient because it lacked that word *product* as discussed above. Claim 10 remains directed specifically to data, which is *per se* not a statutory class of invention. Examiner again suggests to Applicant that “a computer program product tangibly embodied on a computer-readable medium” is a possible amendment that will bring this claim into compliance with 35 U.S.C. §101.
18. Claims 11-14 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Based on Supreme Court precedent, a method/process claim must (1) be tied to another statutory class of invention (such as a particular apparatus) (see at least *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876)) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing (see at least *Gottschalk v. Benson*, 409 U.S. 63, 71 (1972)). A method/process claim that fails to meet one of the above requirements is not in compliance with the statutory requirements of 35 U.S.C. 101 for patent eligible subject matter. Here claim 11-14 fail to meet the above requirements because they are not tied to a second statutory class of invention.

Claim Rejections - 35 USC § 102

19. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:
- A person shall be entitled to a patent unless –

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

- 20. Examiner's Note:** The Examiner has pointed out particular references contained in the prior art of record within the body of this action for the convenience of the Applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply. Applicant, in preparing the response, should consider fully the entire reference as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.
- 21.** Claims 1-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Holtz et al. (U.S. 6,760,916).

Claim 1:

Holtz, as shown, discloses the following limitations:

- *means for storing the content, wherein the content is correlated with a content portion indicator that indicates the content portion and an advertisement portion indicator that indicates the advertisement portion; and*
(see at least column 19, lines 61-63),
- *means for distributing the content* (see at least column 25, line 23-26),
- *recording a distribution log at the time of execution of distributing the content, wherein the distribution log is correlated with the content portion indicator and the advertisement portion indicator* (see at least column 37, lines 19-22),
- *means for outputting information showing which content portion of the content portions which are combined with the advertisement portion is effective for the advertisement by comparing number of distribution for*

combinations of the content portions and the advertisement portion (see at least column 37, traffic manager manages the hit number of each advertisement and can be programmed to block an advertisement when it reaches a maximum hit number; Examiner notes that in a system claim directed to a means for outputting information, the content of the information is considered non-functional descriptive material and does not affect the patentability of the claim).

Claim 2:

Holtz, as shown, discloses the following limitations:

- *store the content, wherein the content is correlated with a content portion indicator that indicates the content portion and an advertisement portion indicator that indicates the advertisement portion; and (see at least column 19, lines 61-63),*
- *distribute the content (see at least column 25, line 23-26),*
- *record a distribution log at the time of execution of the distributing means, wherein the distribution log is correlated with the content portion indicator and the advertisement portion indicator (see at least column 37, lines 19-22),*
- *output information showing which content portion of the content portions which are combined with the advertisement portion is effective for the advertisement by comparing number of distribution for combination s of the content portions and the advertisement portion (see at least column 37, traffic manager manages the hit number of each advertisement and can be programmed to block an advertisement when it reaches a maximum hit number).*

Claims 3 and 15:

Holtz, as shown, discloses the following limitations:

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- *record a distribution log at the time of execution of the distributing means, wherein the distribution log is correlated with the content portion indicator and the advertisement portion indicator (see at least column 37, lines 19-22).*

Claims 4 and 11:

Holtz, as shown, discloses the following limitations:

- *a central processing unit (CPU) of the content distribution device is to execute the procedures of (see at least Figure 1),*
- *storing the content, wherein the content is correlated with a content portion indicator that indicates the content portion and an advertisement portion indicator that indicates the advertisement portion (see at least column 19, lines 61-63),*
- *distributing the content; and see at least column 25, line 23-26),*
- *recording a distribution log at the time of execution of distributing the content, wherein the distribution log is correlated with the content portion indicator and the advertisement portion indicator (see at least column 37, lines 19-22),*
- *outputting information showing which content portion of the content portions which are combined with the advertisement portion is effective for the advertisement by comparing number of distribution for combination s of the content portions and the advertisement portion (see at least column 37, traffic manager manages the hit number of each advertisement and can be programmed to block an advertisement when it reaches a maximum hit number; Examiner notes that in a system claim directed to a device that outputs information, the content of the information is considered non-functional descriptive material and does not affect the patentability of the claim).*

Claims 7, 16 and 17:

Holtz, as shown, discloses the following limitations:

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- *means for outputting a content portion distribution log to a content provider which provides the content portion upon receiving a request for distribution log data from the content provider, wherein the content portion distribution log is retrieved from the log recording means based on the content portion indicator; and (see at least column 44, lines 48-53),*
- *means for outputting an advertisement portion distribution log to an advertisement provider which provides the advertisement portion upon receiving a request for distribution log data from the advertisement provider, wherein the advertisement portion distribution log is retrieved from the log recording means based on the advertisement portion indicator (see at least column 44, lines 48-53).*

Claims 5:

Holtz, as shown, discloses the following limitations:

- *means for recording a distribution log at the time of execution of distributing the content, wherein the distribution log is correlated with the content portion indicator and the advertisement portion indicator (see at least column 37, lines 19-22),*
- *means for outputting information showing which content portion of the content portions which are combined with the advertisement portion is effective for the advertisement by comparing number of distribution for combinations of the content portions and the advertisement portion (see at least column 37, traffic manager manages the hit number of each advertisement and can be programmed to block an advertisement when it reaches a maximum hit number; Examiner notes that in a system claim directed to a means for outputting information, the content of the information is considered non-functional descriptive material and does not affect the patentability of the claim).*

Claim 6:

Holtz, as shown, discloses the following limitations:

- *record a distribution log at the time of execution of distributing the content, wherein the distribution log is correlated with the content portion indicator and the advertisement portion indicator (see at least column 37, lines 19-22),*
- *output information showing which content portion of the content portions which are combined with the advertisement portion is effective for the advertisement by comparing number of distribution for combination s of the content portions and the advertisement portion (see at least column 37, traffic manager manages the hit number of each advertisement and can be programmed to block an advertisement when it reaches a maximum hit number).*

Claims 8 and 12:

Holtz, as shown, discloses the following limitations:

- *A content distribution log recording device for recording a distribution log of a content distributed across a network, wherein the content comprises a content portion and an advertisement portion and is correlated with a content portion indicator that indicates the content portion and an advertisement portion indicator that indicates the advertisement portion (see at least column 37, lines 19-22),*
- *a central processing unit (CPU) of the content distribution log recording device is to execute the procedures of (see at least Figure 1),*
- *records a distribution log at the time of execution of distributing a content, wherein the distribution log is correlated with the content portion indicator and the advertisement portion indicator (see at least column 37, lines 19-22),*
- *outputs a content portion distribution log to a content provider which provides the content portion upon receiving a request for distribution log data from the*

content provider, wherein the content portion distribution log is retrieved from the recorded distribution log based on the content portion indicator; and (see at least column 44, lines 48-53),

- *outputs advertisement portion distribution log to an advertisement provider which provides the advertisement portion upon receiving a request for distribution log data from the advertisement provider, wherein the advertisement portion distribution log is retrieved from the recorded distribution log based on the advertisement portion indicator (see at least column 44, lines 48-53).*

Claims 9 and 18-20:

Holtz, as shown, discloses the following limitations:

- *An end device for receiving the content distributed by the device according to claim 1 (see at least Figure 1, Item 120).*

Claim 10:

Holtz, as shown, discloses the following limitations:

- *A data for indicating a content comprising a content portion and an advertisement portion (see at least column 23, lines 55-58),*
- *the data comprises: a unit for recording a content portion indicator that indicates the content portion (see at least column 23, lines 58-59),*
- *a unit for recording an advertisement portion indicator that indicates the advertisement portion; and (see at least column 35, lines 31-33)*
- *a unit for recording a content indicator, wherein the content indicator is correlated with the content portion indicator and the advertisement portion indicator (see at least column 24, lines 42-44).*

Claim 13:

Holtz, as shown, discloses the following limitations:

- *developing the content by incorporating an advertisement image for a product or a service into the promotional image* (see at least column 28, line 49-56, “adding auxiliary information” such as advertisements).

Claim 14:

Holtz, as shown, discloses the following limitations:

- *obtaining viewing logs; and* (see at least column 37, lines 64-65),
- *paying the compensation from an advertisement provider to a content provider on the basis of the viewing logs* (see at least column 37, lines 19-22).

Response to Arguments

- 22.** Applicant's arguments filed 17 June 2008 have been fully considered but they are not persuasive. Applicant argued that “Holtz at least fails to teach, suggest or disclose that [1] a distribution log is correlated with the content portion indicator and the advertisement portion indicator and [2] outputting the information showing which content portion of the content portions which are combined with the advertisement portion is effective for the advertisement by comparing the number of distribution for combinations of the content portions in the advertisement portion” (pp 9 of Applicant's amendment).
- 23.** With regard to the first argument, as shown in the rejections above, Holtz discloses a distribution log, see at least column 37, lines 19-20, “[m]etrics manager is configurable to *log*, read, archive or format data for customized reports” (emphasis added). The metrics manager compiles data to describe the advertisement distribution. Further Holtz also discloses the account manager in column 37, the paragraph starting at line 64 which also logs account transactions and can “format data for customized reports by... topics, show schedules and the like.” The content portion indicator is interpreted to mean a data/identifier for content data, not unlike a file name. Although the prior art teaches this limitation, it is important to point out that this limitation is directed to the content of data that the invention compiles and outputs. The content of data is considered non-

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functional descriptive material and does not patentably affect the scope of the claims. Therefore even if the Holtz invention did not specifically mention logging the identification information for each advertisement or content portion, it is enough that Holtz specifically discussed logging the metrics related to the distribution of content.

24. With regard to the second argument, as discussed in the rejections above, this limitation was not part of the original disclosure and is therefore new matter. As mentioned above, Examiner again points out that this limitation is indefinite because it discloses "outputting by comparing." Outputting means printing or displaying on a monitor, and comparing is not a function that is commonly understood to aid in such a process. Further it is not clear what is being compared. Further under Examiner's interpretation of this limitation, as shown in the rejections above, Holtz discloses outputting data related to the number of times an ad is displayed.
25. Examiner has responded to Applicant's arguments related to the claim objections and the § 101 rejections above under the section headings **Claim Objections** and **Claim Rejections - 35 USC § 101**, respectively. Applicant is encouraged to contact Examiner with any questions related to the § 101 rejections.
26. This rejection was made **NON-FINAL** as a result of the new § 101 rejections for claims 11-14.

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Conclusion

- 27.** Any inquiry of a general nature or relating to the status of this application or concerning this communication or earlier communications from the Examiner should be directed to **Nathan C Uber** whose telephone number is **571.270.3923**. The Examiner can normally be reached on Monday-Friday, 9:30am-5:00pm. If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, **Eric Stamber** can be reached at **571.272.6724**.
- 28.** Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair> <<http://pair-direct.uspto.gov>>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at **866.217.9197** (toll-free).
- 29.** Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

P.O. Box 1450, Alexandria, VA 22313-1450

or faxed to **571-273-8300**.

- 30.** Hand delivered responses should be brought to the **United States Patent and Trademark Office Customer Service Window**:

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Alexandria, VA 22314.

/Nathan C Uber/Examiner, Art Unit 3622
30 September 2008

/Arthur Duran/
Primary Examiner, Art Unit 3622